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HILLSBORO, OREGON 97123  
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Attorneys for Defendant Costco Wholesale Corporation

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF OREGON**  
**EUGENE DIVISION**

STATE FARM FIRE AND CASUALTY  
COMPANY, as subrogee of Thomas and  
Lisa Klotter,

Plaintiff,

v.

COSTCO WHOLESALE CORPORATION, and  
DANZE, INC.,

Defendants.

Civil No.

NOTICE OF REMOVAL OF ACTION;  
UNDER 28 USC §1441(b)  
(DIVERSITY)

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT, DISTRICT OF  
OREGON, PORTLAND DIVISION:**

**PLEASE TAKE NOTICE** that, pursuant to 28 USC §§1441 and 1446, Defendant  
Costco Wholesale Corporation (“Defendant Costco”) hereby removes to this court the case  
now pending in Lane County Circuit Court as *State Farm Fire and Casualty Company*, as

**Page 1 - NOTICE OF REMOVAL OF ACTION; UNDER 28 U.S.C. §1441(b)  
(DIVERSITY)**

BRISBEE & STOCKTON LLC  
*Attorneys at Law*  
139 N.E. LINCOLN STREET, P.O. Box 567  
HILLSBORO, OREGON 97123  
TELEPHONE (503) 648-6677  
FAX (503) 648-1091  
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*subrogee of Thomas and Lisa Klotter, v. Costco Wholesale Corporation and Danze, Inc., Case No. 19CV05222.*

As grounds for removal, Defendant Costco states as follows:

(1) On January 31, 2019, Plaintiff State Farm Fire and Casualty Company (“Defendant State Farm”) filed a complaint in this action now pending in Lane County Circuit Court as *State Farm Fire and Casualty Company, as subrogee of Thomas and Lisa Klotter, v. Costco Wholesale Corporation, and Danze, Inc., Case No. 19CV05222*. Pursuant to 28 USC §1446(a), all state court papers served on Defendant Costco at the time of removal, consisting of a summons, complaint and service documents totaling seven pages, are attached hereto as Exhibit 1.

(2) This Notice of Removal is timely filed under 28 USC §1446(b) which provides that a notice of removal must be filed within 30 days after a defendant receives, by service or otherwise, the initial pleading. As of the date of filing this Notice of Removal, Defendant Costco had been served with process. Plaintiff served Defendant Costco through its Registered Agent, CT Corporation System, Salem, Oregon, on March 6, 2019. See Exhibit 1, p. 7.

(3) No further proceedings have been had in the Circuit Court of Lane County, Oregon, as of the date of filing this Notice of Removal.

(4) This is a civil action over which this court has original jurisdiction pursuant to 28 USC §1332. This action may be removed pursuant to 28 USC §1441 because the action involves a controversy between a citizen of Oregon and a citizen of Washington (Defendant Costco) and a citizen of Illinois and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

(5) Plaintiff State Farm Fire and Casualty is a corporation licensed to transact insurance business in the State of Oregon and is the subrogee of Thomas and Lisa Klotter

who are alleged to be residents of Eugene, Oregon (see paragraphs 1 and 2 of Plaintiff's Complaint).

(6) Defendant Costco was, when Plaintiff filed its complaint, and is now, a corporation incorporated under the laws of the State of Washington, with its principal place of business in the State of Washington.

(7) Based upon an on-line search, it is believed that Defendant Danze, Inc., is a duly incorporated corporation in the State of Illinois as alleged in paragraph 5 of Plaintiff's complaint. See Declaration of Costco attorney William H. Stockton, attached hereto as Exhibit 2.

(8) Plaintiff alleges money damages of more than \$75,000, exclusive of interests and costs. See, Ex. 1, p. 6.

**REMOVAL TO THIS DISTRICT IS PROPER**

(9) Pursuant to 28 USC §§1332, 1441, and 1446, removal of the above-captioned state court action to this court is appropriate.

(10) Pursuant to 28 USC §1441(a), removal is made to this court as the district and division embracing the place where the state action is pending.

(11) Defendant Costco is providing to Plaintiff, through its lawyer, written notice of the filing of this Notice of Removal. Defendant Costco is presently unable to provide written notice of the filing of this Notice of Removal on Defendant Danze as the attorney representing Defendant Danze has not appeared and is unknown presently. Furthermore,

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Defendant Costco is filing a copy of this Notice of Removal with the Clerk of the Circuit Court of Lane County, Oregon, where the action is currently pending.

DATED this 15<sup>th</sup> day of March, 2019.

BRISBEE & STOCKTON LLC

By: /s/ William H. Stockton  
William H. Stockton, OSB #743163  
Attorneys for Defendant Costco Wholesale  
Corporation  
P. O. Box 567  
Hillsboro, Oregon 97123  
[whs@brisbeeandstockton.com](mailto:whs@brisbeeandstockton.com)  
(503) 648-6677

3/11/2019 1:27 PM

19CV05222

**IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LANE**

**STATE FARM FIRE AND CASUALTY  
COMPANY**, as subrogee of Thomas and Lisa  
Klotter,

Plaintiff,

vs.

**COSTCO WHOLESALE CORPORATION  
and DANZE, INC.,**

Defendants.

Case No.: 19CV05222

**SUMMONS**

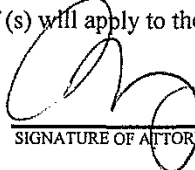
To: Costco Wholesale Corporation, Defendant.

You are hereby required to appear and defend the complaint filed against you in the above entitled action within thirty (30) days from the date of service of this summons upon you, and in case of your failure to do so, for want thereof, plaintiff(s) will apply to the court for the relief demanded in the complaint.

**NOTICE TO THE DEFENDANT:  
READ THESE PAPERS CAREFULLY!**

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service upon the plaintiff.

If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.



SIGNATURE OF ATTORNEY/AUTHOR FOR PLAINTIFF

**George M. Shumsky**  
ATTORNEY'S/AUTHOR'S NAME

**951468**  
BAR NO.

**PO Box 56028**

ADDRESS

**Portland, OR 97238-6028**

**503-222-4339**

CITY

STATE

ZIP

PHONE

TRIAL ATTORNEY IF OTHER THAN ABOVE

\*\*\*\*\*

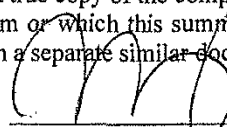
STATE OF OREGON; County of Lane} ss.

I, the undersigned attorney of record for the plaintiff, certify that the foregoing is an exact and complete copy of the original summons in the above-entitled action.

ATTORNEY OF RECORD FOR PLAINTIFF(S)

\*\*\*\*\*

TO THE OFFICER OF OTHER PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this summons, together with a true copy of the complaint mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this summons is directed, and to make your proof of service on the reverse hereof or upon a separate similar document which you shall attach hereto.



ATTORNEY(S) FOR PLAINTIFF(S)

LAW OFFICES OF  
**SHUMSKY & BACKMAN**  
1050 SW 6<sup>TH</sup> AVENUE, SUITE 1100  
PORTLAND, OREGON 97204-5083  
(503) 222-4339

## PROOF OF SERVICE

STATE OF \_\_\_\_\_  
 County of \_\_\_\_\_

I hereby certify that I made service of the foregoing summons upon the individuals and other legal entities to be served, named below, by delivering or leaving true copies of said summons and the complaint mentioned therein, certified to be such by the attorney for the plaintiff, as follows:

## Personal Service Upon Individual(s)

Upon \_\_\_\_\_, by delivering such true copy to him/her, personally and in person, at \_\_\_\_\_, on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_m.

## Substituted Service Upon Individual(s)\*\*

Upon \_\_\_\_\_, by delivering such true copy to his/her dwelling house or usual place of abode, to-wit: \_\_\_\_\_, to \_\_\_\_\_, who is a person over the age of 14 years and a member of the household of the person served on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_m.

Upon \_\_\_\_\_, by delivering such true copy to his/her dwelling house or usual place of abode, to-wit: \_\_\_\_\_, to \_\_\_\_\_, who is a person over the age of 14 years and a member of the household of the person served on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_m.

## Office Service Upon Individual(s)\*\*

Upon \_\_\_\_\_, at the office which he/she maintains for the conduct of business as \_\_\_\_\_, by leaving such true copy with \_\_\_\_\_, the person who is apparently in charge, on \_\_\_\_\_, 20\_\_\_\_, during normal working hours, at to-wit: \_\_\_\_\_ o'clock \_\_\_\_m.

Service on Corporations, Limited Partnerships or Unincorporated Associations  
 Subject to Suit Under a Common Name

Upon \_\_\_\_\_, by \_\_\_\_\_

(NAME OF CORPORATION, LIMITED PARTNERSHIP, ETC.)

(a) delivering such true copy, personally and in person, to \_\_\_\_\_ who is a/the \_\_\_\_\_ thereof; OR

(b) leaving such true copy with \_\_\_\_\_, the person who is apparently in charge of the office of \_\_\_\_\_, who is a/the \* \_\_\_\_\_ thereof;

\*Specify registered agent, officer (by title), director, general partner, managing agent.

at \_\_\_\_\_, on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock, \_\_\_\_m.

DATED: \_\_\_\_\_

I further certify that I am a competent person 18 years of age or older and a resident of the state of service or the State of Oregon, and that I am not a party to nor an officer, director or employee of, nor attorney for any party, corporate or otherwise; that the person, firm or corporation served by me is the identical person, firm or corporation named in the action.

\_\_\_\_\_  
 SHERIFF

By \_\_\_\_\_

\_\_\_\_\_  
 DEPUTY

DATED: \_\_\_\_\_

\_\_\_\_\_  
 SIGNATURE

\_\_\_\_\_  
 TYPE OR PRINT NAME

\_\_\_\_\_  
 ADDRESS

\_\_\_\_\_  
 PHONE

The signature lines on the left should be used only by an Oregon county sheriff or deputy; all other servers complete certificate on the right. The Proof of Service above contains most, but not all, of the methods of service. For example, this form does not include proof of service on a minor or incompetent person. See ORCP 7D.(2) and 7D.(3) for complete service methods on particular parties. \*\*Where substituted or office service is used, the plaintiff, as soon as reasonably possible, shall cause to be mailed a true copy of the summons and complaint to the defendant at the defendant's dwelling house or usual place of abode, together with a statement of the time, date and place at which such service was made. Use S-N Form No. 1149 or equivalent.

LAW OFFICES OF  
 SHUMSKY & BACKMAN  
 1050 SW 6<sup>TH</sup> AVENUE, SUITE 1100  
 PORTLAND, OREGON 97204-5083  
 (503) 222-4339

1/30/2019 2:48 PM  
19CV05222

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LANE

**STATE FARM FIRE AND CASUALTY  
COMPANY**, as subrogee of Thomas and Lisa  
Klotter,

Plaintiff,

vs.

**COSTCO WHOLESALE CORPORATION,  
and DANZE, INC.**

Defendants.

Case No.:

**COMPLAINT**

(Not Subject to Mandatory Arbitration)

Claim Amount: \$137,047.68  
ORS 21.160(1)(c)  
Filing fee: \$560.00

For its claim for relief against defendants, State Farm Fire and Casualty Company states  
and alleges the following:

**I. PARTIES**

1.

At all times relevant hereto, State Farm Fire and Casualty Company ("State Farm") was a  
corporation licensed to transact insurance business in the state of Oregon.

2.

At all times relevant hereto, Thomas and Lisa Klotter ("Klotter") were the owners of real  
and personal property at 1670 Duke Ct., Eugene, Oregon ("Subject Property").

3.

At all times relevant hereto, State Farm insured the Subject Property pursuant to Policy  
No. 37-CR-4122-4.

COMPLAINT-I

SHUMSKY & BACKMAN  
1050 SW SIXTH AVENUE, SUITE 1100  
PORTLAND, OR 97204  
TELEPHONE (503) 222-4339

1 4.

2 At all times relevant hereto, Costco Wholesale Corporation ("Costco"), was a  
3 Washington corporation engaged in the sale of toilets and water supply lines for toilets in the  
4 state of Oregon.

5 5.

6 At all times relevant hereto, Danze, Inc. ("Danze"), was an Illinois corporation engaged  
7 in the import and sale of toilets and water supply lines for toilets in the state of Oregon.  
8

9 **II. FACTUAL BACKGROUND**

10 6.

11 On September 18, 2017, the Subject Property was damaged by water.

12 7.

13 The water originated from a leak at a water supply line to a toilet located in an upstairs  
14 bathroom at the Subject Property.

15 8.

16 The toilet and water supply line were manufactured in Southeast Asia by an unknown  
17 company and were imported into the U.S. by Danze.

18 9.

19 The toilet and water supply line were sold by Costco's warehouse #17 in Eugene, Oregon  
20 to Klotter on January 2, 2013 and were identified as a "Water Ridge 2PC Toilet," item number  
21 533515.  
22

23 10.

24 The water leak originated at a fracture on the aforesaid water supply line's plastic nut that  
25 connected the water line to the toilet tank.  
26

COMPLAINT-2

SHUMSKY & BACKMAN  
1050 SW SIXTH AVENUE, SUITE 1100  
PORTLAND, OR 97204  
TELEPHONE (503) 222-4339



11.

The plastic nut fractured as a result of a design defect, as the plastic nut's wall thickness was unduly thin for the applied stress that it would encounter in its application as part of a water supply line to a toilet.

12.

Klotter made a claim under their insurance policy with State Farm for damage to the Subject Property caused by the incident described herein.

13.

State Farm indemnified Klotter for said damage in the amount of \$135,541.68 after consideration of a \$1,506.00 deductible for a total loss of \$137,047.68, and thereafter became equitably and contractually subrogated to its insured's rights.

### **III. LIABILITY**

#### **(Product Liability)**

14.

The subject toilet water supply line was unreasonably dangerous and defective and failed to meet the reasonable expectations of Klotter as a result of the design defect described herein that resulted in a unanticipated, uncontrolled water leak.

15.

As a result of the defect set forth herein, for which defendants are liable, plaintiff's insureds sustained damage to their property in the amount of \$137,047.68.

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COMPLAINT-3

SHUMSKY & BACKMAN  
1050 SW SIXTH AVENUE, SUITE 1100  
PORTLAND, OR 97204  
TELEPHONE (503) 222-4339

1       **WHEREFORE**, plaintiff demands judgment against defendants in the amount of  
2 \$137,047.68, together with pre-judgment interest at the rate of 9% per annum, costs,  
3 disbursements, and any other relief deemed equitable by this court.  
4

5       Dated this 30 day of January 2019.  
6

7                   LAW OFFICES OF  
8                   SHUMSKY & BACKMAN

9       By: 

10                   George M. Shumsky, OSB #951468

11                   Fax: (360) 891-0110

12                   E-Mail: [george@shumsky-backman.com](mailto:george@shumsky-backman.com)

13                   **Trial Attorney:** George M. Shumsky  
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COMPLAINT-4

SHUMSKY & BACKMAN  
1050 SW SIXTH AVENUE, SUITE 1100  
PORTLAND, OR 97204  
TELEPHONE (503) 222-4339

3/11/2019 1:27 PM  
19CV05222

**AFFIDAVIT OF SERVICE**

State of Oregon

County of Lane

Circuit Court

Case Number: 19CV05222

Plaintiff:

STATE FARM FIRE AND CASUALTY COMPANY, as subrogee of  
Thomas and Lisa Klotter

vs.

Defendant:

COSTCO WHOLESALE CORPORATION and DANZE, INC.

For:

George M. Shumsky  
Shumsky and Backman - OR  
P.O. Box 56028  
Portland, OR 97238-6028

Received by MALSTROM'S PROCESS SERVING CO. on the 5th day of March, 2019 at 2:18 pm to be served on **COSTCO WHOLESALE CORPORATION R/A CT CORPORATION SYSTEM, 780 COMMERCIAL STREET SE, SUITE 100, SALEM, OR 97301.**

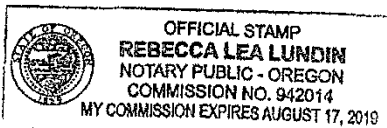
I, Bobby Chandler, being duly sworn, depose and say that on the **6th day of March, 2019 at 9:05 am, I:**

**SERVED** the within named **COSTCO WHOLESALE CORPORATION R/A CT CORPORATION SYSTEM at 780 COMMERCIAL STREET SE, SUITE 100, SALEM, OR 97301** by personally serving a true copy of the **Summons and Complaint** upon **RYLYNN POOLE**, who is a clerk on duty in the office of the Registered Agent and who is authorized to accept service.

I declare I am a resident of the State of Oregon. I am a competent person 18 years of age or older and not a party to or attorney in this proceeding. I certify that the person, firm, or corporation served is the identical one named in this action. I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Subscribed and Sworn to before me on the 6th day of March, 2019 by the affiant  
who is personally known to me.

NOTARY PUBLIC, State of Oregon  
County of Mahon



Bobby Chandler  
Bobby Chandler  
Date: 3/7/19

MALSTROM'S PROCESS SERVING CO.  
155 Culver Lane S  
Salem, OR 97302  
(503) 585-0234

Our Job Serial Number: ONE-2019001204  
Ref: 106-0056

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6 HILLSBORO, OREGON 97123  
7 Phone: (503) 648-6677  
8 Fax: (503) 648-1091

Attorneys for Defendant Costco Wholesale Corporation

9  
10 **UNITED STATES DISTRICT COURT**  
11 **DISTRICT OF OREGON**  
12 **EUGENE DIVISION**  
13  
14

15 STATE FARM FIRE AND CASUALTY  
16 COMPANY, as subrogee of Thomas and  
17 Lisa Klotter,

Plaintiff,

18 v.

19 COSTCO WHOLESALE CORPORATION,  
20 and DANZE, INC.,

21 Defendants.

Civil No.

**DECLARATION OF  
WILLIAM H. STOCKTON**

22 I, WILLIAM H. STOCKTON, declare under penalty of perjury as follows:

23 That I am the attorney for Defendant Costco Wholesale Corporation in the above-  
24 entitled matter and I have made inquiry of the Plaintiff's attorney regarding service of the  
25 Complaint on Defendant Danze, Inc., and have not been advised that an appearance has  
26

1 been filed and no attorney has appeared as attorney of record. That I have done a  
2 computer search of Defendant Danze, Inc., which has confirmed that Defendant Danze,  
3 Inc., is an Illinois corporation as alleged in Plaintiff's Complaint. That I make this  
4 declaration in support of Defendant Costco's removal to federal court and the requirement  
5 of complete diversity to remove the matter to federal court.  
6

7 I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST  
8 OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS  
9 EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

10 **DATED** this 15<sup>th</sup> day of March, 2019, at Hillsboro, Oregon.

11  
12 /s/ William H. Stockton  
13 William H. Stockton  
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26

**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing **NOTICE OF REMOVAL OF ACTION;  
UNDER 28 USC §1441(b) (DIVERSITY)** on the following party(ies):

George M. Shumsky  
Shumsky & Backman  
1050 S. W. Sixth Avenue  
Suite 1100  
Portland, Oregon 97204

Attorney for Plaintiff

by mailing a true and correct copy thereof to said party(ies) on the date stated below.

DATED this 15<sup>th</sup> day of March, 2019.

/s/ William H. Stockton  
William H. Stockton, OSB #743163  
whs@brisbeeandstockton.com  
Attorneys for Defendant Costco